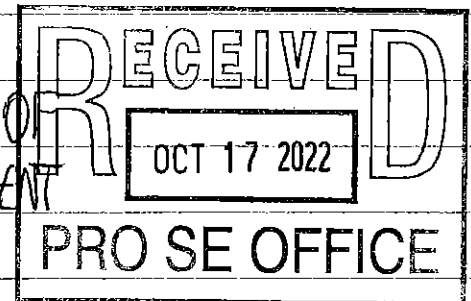


MALIK L. BROWN,
— against — plaintiff;
STEPHEN URBANSKI;

Case No. 21-cv-214(cs)

Defendants,
MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF'S MOTION FOR THE APPOINTMENT
OF COUNSEL



This is a Civil rights case filed under 42 U.S.C. § 1983 by a state prisoner and asserting Claims for the Unconstitutional Excessive Use of force, Conditions of confinement (deprivation of recreation) where plaintiff suffered numerous injuries while in restraints and defenses by another prisoner welding restraints used as an dangerous instrument also increased pain and emotional distress due to the use of force. The plaintiff seeks damages as to all Claims and wished to be afforded a trial by jury.

The Complaint alleges that the plaintiff was assaulted by another inmate while fully restrained with the unsecure restraints of this prisoner also that plaintiff was never served an Restraint Order and was unlawfully deprived the basic necessity of recreation for 37 days in the sun in a overcrowded yards of prisoners in restraints further states staff watched the assault and when finally responded to officers deliberately

applied a burst of OC spray tho assault was over. Also states lack of medical care as a result plaintiff suffered numerous, swelling, Bruises and lacerations an outside trip to St. Luke's hospital in Newburgh was needed where staples were ~~multiple~~ staples was used to close plaintiff's head when sent back to the facility another head laceration was discovered and plaintiff sent back to St. Luke's where doctors gave prison personnel a treatment plan for said wound. Upon failed admissions by staff revealed plaintiff was hit over (14) times officer was given a command to intentionally pepper spray me tho non-combatative and clearly victim.

ARGUMENT

Factual Complexity. Plaintiff alleges he was never served or seen a restraint order and his restraints were unlawful as well that staff sat and watched him get assaulted and battered then upon responding commanding officer whom observed it all gave another officer the order to apply a burst of OC spray deliberately and with excessive force to him tho fully subdued, non-combatative and clearly in need of medical assistance. Finally he claims defendants and their assistance by District Attorney's Office makes this a factual complex case he has not been taken serious and is given documents untimely and not in complete or not at all.

In addition one of the plaintiff claims

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involves his open wounds and the intense pain cause by exposure to the OC spray as well the damage that may have been contracted longevity. It will probably be necessary to present a medical expert witness or to cross-examine one called by the defendants or both. The presence of medical or other issues requiring expert testimony supports the appointment of counsel. MOORE v. Malus, 976 F.2d 268, 272 (5th Cir. 1992) Montgomery v. Pinchak, 294 F.3d 492, 503-04 (3rd Cir. 2002)

The plaintiff's ability to investigate. The plaintiff is currently incarcerated and has limited access to the prison's law library due to set schedules and overcrowding, and hasn't the ability to investigate the facts, e.g. ~~identity~~, locate and interviewing those within the vicinity whom may have seen some or all the use of force also those in restraints as well to see if they were given a restraint order. He is in the same situation with regard to developing the facts as a prisoner who has been transferred to a different institution, a factor that many courts have cited in appointing counsel. Gatson v. Coughlin, 679 F.Supp. 270, 273 (W.D.N.Y. 1988)

In addition this case will require considerable discovery concerning the identity of witnesses, the officers reports that may be claimed privileged statements about the incident electronically stored, any history of misuse of force by the officers and the plaintiff's medical history. see Parham v. Johnson, 126 F.3d 454, 459 (3d Cir. 1997) (holding counsel should have been appointed because prisoner's lack of legal experience and the complex discovery rules clearly put him at a disadvantage in countering defendant's tactics in discovery).

Conflicting Testimony. An investigation of Plaintiff's being in restraints and excessive use of force was answered by Defendants then is squarely in conflict with the statements they are giving now after almost two and a half years the refusal to produce the serving officer, the admissions, of intentional use of force. This aspect of the case will be a credibility contest between the defendants and the plaintiff (and such incarcerated witnesses as can be located.) The existence of these credibility issues support the appointment of counsel. *Gatson v. Coughlin*, 679 F. Supp. at 273. (*Steele v. Shah*, 87 F.3d 1266, 1271 (11th Cir. 1996))

The ability of indigent to present claim. Plaintiff is an indigent prisoner with no legal training, a factor that supports the appointment of counsel. *Forbes v. Edgar*, 112 F.3d 262, 264

Legal Complexity. Plaintiff has asked for a jury trial which requires much greater legal skill than the plaintiff has or can develop. *Solis v. County of Los Angeles*, 814 F.3d 946, 958

Ment of the case. The plaintiff claims clearly establish a constitutional violation. The unprovoked deliberate use of force while fully subdued and non-combative states an eighth amendment violation. The conditions of confinement leading to 37 days of unlawful restraint ultimately causing multiple injuries including a cracked skull and

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defendant's failure to prove that Plaintiff was
actually served for that is an eleventh amendment
violation in the two & a half years defendants
have shown nothing other than printed paper
Clearly with the aid of counsel they can cite
things I don't know but what I do know is
I need a Lawyer to argue my point the fact in
an expertise I can't.

For the foregoing reasons, the Court should grant
the plaintiff's motion and appoint Counsel in this case.

[Dated] October 6th, 2022

M. ~~BROWN~~

MAKIL BROWN

FIVE POINTS CORRECTIONAL FACILITY

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